

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMEL DALLUGE,
vs.
SUPERINTENDANT,
Petitioner,
Respondent.

NO: 13-CV-5137-JTR

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING HABEAS PETITION

BEFORE THE COURT is Petitioner’s “Objection(s) to Report and Recommendation to Dismiss Petition” (ECF No. 12). On December 30, 2013, Magistrate Judge John T. Rodgers recommended dismissing the habeas petition without prejudice to Petitioner filing a civil rights complaint challenging the conditions of his confinement. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action is proper method of challenging conditions of confinement).

Petitioner contends that Magistrate Judge Rodgers’ reliance on *Badea v. Cox* is shortsighted and argues that he should be allowed to proceed with his allegations

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1 of “hypnosis and inhuman and degrading treatments,” as well as the denial of
2 access to law books at the Coyote Ridge Correction Center in this habeas action.
3 When a prisoner is claiming that the conditions of his incarceration are
4 unconstitutional, rather than challenging the legality or duration of his
5 confinement, a petition for writ of habeas corpus is not the proper mechanism for
6 obtaining relief. *See Crawford v. Bell*, 599 F.2d 890 (9th Cir. 1979). Petitioner is
7 not seeking his release from confinement.

8 After consideration of Petitioner’s arguments, **IT IS ORDERED** that the
9 Report and Recommendation (ECF No. 11) is **ADOPTED in its** entirety and the
10 petition is **DISMISSED without prejudice** to seeking appropriate remedies in a
11 civil rights complaint pursuant to 42 U.S.C. § 1983.

12 **REVOCATION OF *IN FORMA PAUPERIS* STATUS**

13 Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken *in forma*
14 *pauperis* if the trial court certifies in writing that it is not taken in good faith.” The
15 good faith standard is satisfied when an individual “seeks appellate review of any
16 issue not frivolous.” *See Coppedge v. United States*, 369 U.S. 438, 445 (1962).
17 For purposes of 28 U.S.C. § 1915, an appeal is frivolous if it lacks any arguable
18 basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).
19 The Court finds that any appeal of this Order would not be taken in good faith and
20 would lack any arguable basis in law or fact. Accordingly, the Court hereby

1 revokes Plaintiff's *in forma pauperis* status. If Plaintiff wishes to pursue an
2 appeal, he must pay the requisite filing fee.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
4 Order, enter judgment, forward a copy to Petitioner at his last known address and
5 close the file. The Court further certifies that pursuant to 28 U.S.C. § 1915(a)(3),
6 an appeal from this decision could not be taken in good faith, and there is no basis
7 upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R.
8 App. P. 22(b). Plaintiff's *in forma pauperis* status is revoked.

9 **DATED** February 3, 2014.



10 A handwritten signature in blue ink that reads "Thomas O. Rice".
11 THOMAS O. RICE
12 United States District Judge
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